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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,403	12/16/2004	Gert Johannes van Taak Nieuwoudt	169-83339	7404

22242 7590 01/08/2008  
FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER
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WILLIAMS, MONICA L

ART UNIT	PAPER NUMBER
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3644

MAIL DATE	DELIVERY MODE
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01/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/505,403	<b>Applicant(s)</b> NIEUWOUDT, GERT JOHANNES VAN TAAK	
	<b>Examiner</b> Monica L. Williams	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 21-35 is/are pending in the application.
- 4a) Of the above claim(s) 21-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 28-30 and are rejected under 35 U.S.C. 103(a) as being unpatentable over Rast Jr. (US 4,357,884) in view of Demuth (US 3,511,032).
2. As to claim 28, Rast Jr. discloses a method of improving harvest yield (from col. 2 lines 41-45) for tentacle plants ("tomatoes, . . . watermelons, cantalopes" of col. 2 lines 63-66) by providing a water-impervious membrane strip ("black polyethylene plastic sheeting" of col. 2 lines 66-68) comprising laying a ground cover on a strip of ground ("plastic sheeting is applied" at col. 3 lines 1-15); the ground cover including a membrane strip of a synthetic plastics material having a side which in use is an upper side on which a growing tentacled plant can be supported, securing the ground cover to the ground (from "buried in the soil at the edges of the row" of col. 3 lines 1-15); planting tentacle plants or their seed through apertures in the membrane strip (from "plant seedling being introduced into each hole" of col. 3 lines 1-15 and Fig. 3) so that tentacle plants growing through the apertures can anchor themselves to the tentacles anchoring formations on top of the membrane strip (from Fig. 4). Not disclosed is ground cover with a tentacle plant anchor.

3. Demuth, however, discloses a tentacle plant anchor (14 of Figs. 1-4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Rast Jr. by laying the tentacle plant anchor on a upper side of a ground cover as disclosed by Demuth in the vicinity of a tentacled plant allowing the plant to grow between the ground cover and the anchor so as to provide support for the plant (see Fig. 4 of Demuth).

4. As to claim 29, the limitations of claim 28 are disclosed as described above. Not disclosed is unrolling the membrane strip and tentacle plant anchor as plys of a roll. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by rolling both out as plys of a roll so as to reduce needed labor.

5. As to claim 30, the limitations of claim 28 are disclosed as described above. Rast Jr. further discloses securing the ground cover with longitudinally extending zones next to extending edges of the ground cover to the ground (from "buried in the soil at the edges of the row" of col. 3 lines 1-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by burying the edges of the tentacle plant anchor so that it does not change position during the growing season.

6. As to claim 32, Rast Jr. discloses a method of improving harvest yield (from col. 2 lines 41-45) for tentacle plants ("tomatoes, . . . watermelons, cantalopes" of col. 2 lines 63-66) by providing tentacle anchoring formations comprising laying a membrane

strip of a synthetic material on a strip of ground ("plastic sheeting is applied" at col. 3 lines 1-15); securing the ground cover to the ground (from "buried in the soil at the edges of the row" of col. 3 lines 1-15); planting tentacle plants or their seed through apertures in the membrane strip (from "plant seedling being introduced into each hole" of col. 3 lines 1-15 and Fig. 3) so that tentacle plants growing through the apertures can anchor themselves to the tentacles anchoring formations on top of the membrane strip (from Fig. 4). Not disclosed is laying tentacle anchoring formations on the upper side of the membrane strip. Demuth, however, discloses laying a tentacle anchoring formation (14 of Figs. 1-4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Rast Jr. by laying the tentacle anchoring formation on a ground cover as disclosed by Demuth so as to provide a means of harvesting the crop (see Fig. 4 of Demuth).

7. As to claim 33, the limitations of claim 32 are disclosed as described above. Not disclosed is unrolling the membrane strip and tentacle anchoring formations as plies of a roll. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by rolling both out as plies of a roll so as to reduce needed labor.

8. As to claim 34, the limitations of claim 32 are disclosed as described above. Rast Jr. further discloses securing the membrane strip with longitudinally extending zones next to extending edges of the ground cover to the ground (from "buried in the soil at the edges of the row" of col. 3 lines 1-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast

Jr. as modified by Demuth by burying the edges of the tentacle anchor formations so that it does not change position during the growing season.

9. Claims 31 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rast Jr. (US 4,357,884) in view of Demuth (US 3,511,032) in further view of Audineau et al. (EP 0465327 A2).

10. As to claim 31, the limitations of claim 28 are disclosed as described above. Not disclosed is providing a tunnel over the anchor and cover. Audineau et al., however, discloses providing a tunnel ( of Fig. 1) with a sheet of ground cover (2 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by providing a tunnel as disclosed by Audineau et al. so as to protect the crop from frost or sunscald.

11. As to claim 35, the limitations of claim 32 are disclosed as described above. Not disclosed is providing a tunnel over the formations and cover. Audineau et al., however, discloses providing a tunnel ( of Fig. 1) with a membrane strip (2 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by providing a tunnel as disclosed by Audineau et al. so as to protect the crop from frost or sunscald.

### ***Response to Arguments***

12. Claims 21-27 were withdrawn by the applicant, however the applicant must present the text of all withdrawn claims. Only canceled claims do not need to be present in full text. For this time only the examiner will waive this requirement, however next

time if the withdrawn claims are not presented in full text a non-compliant amendment notice will be sent out. Also in the applicant's remarks under Claim Objections, the applicant refers to claim 21 as being cancelled, however the listing of claims indicates that claim 21 is withdrawn. Applicant must clarify this situation.

13. Applicant's arguments filed 09/06/2007 have been fully considered but they are not persuasive.

14. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

15. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the magnitudes of the mesh or the dimensions of the net) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

16. In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica L. Williams whose telephone number is 571-270-3113. The examiner can normally be reached on Mon to Fri 7:30-5:00, Alternate Friday off, EST.

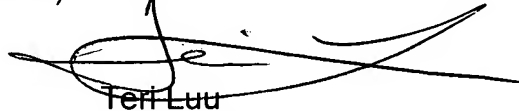
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Teri Luu  
Supervisory Patent Examiner  
Art Unit 3644

MW 12/31/2007